IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

WP(C).No. 18037 of 2006(V)

PETITIONER:

K.B. RAJESWARI,
PART-TIME MUSIC TEACHER,
S.R.V.S.M. G.L.P. SCHOOL,
KUMBALAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN

RESPONDENTS:

1. **STATE OF KERALA,**
   REPRESENTED BY ITS CHIEF SECRETARY,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE JOINT DIRECTOR OF PUBLIC INSTRUCTION**
   THIRUVANANTHAPURAM.

3. **DEPUTY DIRECTOR (EDUCATION)**
   ERNAKULAM, CIVIL STATION,
   KAKKANAD.

4. **THE DISTRICT EDUCATIONAL OFFICER,**
   ERNAKULAM.

5. **THE ASSISTANT EDUCATIONAL OFFICER,**
   ERNAKULAM.

6. **THE MANAGER, S.R.V.S. M.G. L.P.SCHOOL,**
   KUMBALAM, KUMBALAM P.O.,
   ERNAKULAM DISTRICT.

7. THE MANAGER,
VOCATIONAL HIGHER SECONDARY SCHOOL,
PANANGAD ,PANANGAD P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.N.MOHANAN
SRI.KURIAN GEORGE KANNAMTHANAM
GOVERNMENT PLEADER SRI. T.T. MAHMOOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 18037/2006(V)

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**COPY OF THE JUDGMENT IN W.A. 1107/96 OF THIS HON'BLE COURT DATED 31.3.1999.**
EXT. P2	**:**	**COPY OF THE APPOINTMENT ORDER OF THE PETITIONER FROM 27.1.1994 ISSUED BY THE MANAGER, L.P. SCHOOL, KUMBALAM.**
EXT. P3	**:**	**COPY OF THE ORDER NO. D.Dis. 3146/99/G DATED 13.7.99 OF THE 5TH RESPONDENT.**
EXT. P4	**:**	**COPY OF THE ORDER NO. B2-23197/99/K.Dis DATED 30.11.1999 OF THE 3RD RESPONDENT.**
EXT. P5	**:**	**COPY OF THE ORDER NO. D.Dis. 17738/2000/RA(2)/ DPI DATED 18.5.2000 OF THE 2ND RESPONDENT.**
EXT. P6	**:**	**COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT DATED NIL.**
EXT. P7	**:**	**COPY OF THE ORDER NO. G.1374/2000/K.Dis. DATED 25.7.2000 OF THE 5TH RESPONDENT.**
EXT. P8	**:**	**COPY OF THE G.O. (Ms) 58/71/S.Edn DATED 22.5.1971.**
EXT. P9	**:**	**COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE GOVERNMENT CHALLENGING EXT. P5 ORDER.**
EXT. P10	**:**	**COPY OF THE GOVERNMENT LETTER NO. 45401/K1/2000/G. Edn. DATED 16.1.2001.**
EXT. P11	**:**	**COPY OF THE REVIEW PETITION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT DATED 16.3.2001.**
EXT. P12	**:**	**COPY OF THE G.O. (Rt) NO. 4298/01/G.Edn. DATED 20.11.2001.**
EXT. P13	**:**	**COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT.**

EXT. P14 : COPY OF THE COUNTER AFFIDAVIT FILED BY THE 6TH RESPONDENT.

EXT. P15 : COPY OF THE REPLY AFFIDAVIT OF THE PETITIONER TO THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT.

EXT. P16 : COPY OF THE JUDGMENT IN O.P. NO. 2609/02-I DATED 28.7.2005 OF THIS HON'BLE COURT.

EXT. P17 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT DATED 8.3.2006.

EXT. P18 : COPY OF THE G.O. (Rt) NO. 171/2006/G.Edn DATED 9.1.2006.

1st RESPONDENT'S EXHIBITS:

EXT. R1 : COPY OF THE CIRCULAR NO. H4-119952/89 DATED 15.5.1990 OF DIRECTOR OF PUBLIC INSTRUCTION.

// True Copy //

P.A. to Judge.

dvs

S.SIRI JAGAN,J

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W.P.(C).No.18037 of 2006

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Dated this the 19th day of October, 2007

JUDGMENT

The petitioner is a part-time Music Teacher in the 6th respondent's school. A request was made for converting the part-time post in to full time post on clubbing arrangement with the 7th respondent's school. Originally the same was rejected by Ext.P10 order. In a review petition, the same was confirmed by Ext.P12 order. In Exts.P10 and P12 orders, the reason for rejecting the claim of the petitioner is that there is a protected teacher working in the 7th respondent's School, with which clubbing arrangement is sought. The petitioner challenged Exts.P10 and P12 orders before this Court in O.P.No.2609/2002. When the said O.P was taken up for hearing the learned Government Pleader submitted that the petitioner's case in this regard is correct and there is no protected teacher of Music working in the 7th respondent's school. On the basis of this statement this Court held by Ext.P16 judgment that:

> " I feel that this request can be accepted. Therefore Exts.P10 and P12 are quashed in as much as they proceeded on

the basis that there is a post of Music teacher in the L.P. Section of the V.H.S.School, Panangad itself and the Assistant Educational Officer during the staff fixation year 1999-2000 had sanctioned one part-time post of Music teacher in the L.P. Section of the school for the continuance of existing teacher and the L.P. Section in the High School, Panangad itself have a protected Music teacher and she is continuing in the school without any sanctioned post, and a decision in this regard will be taken by the first respondent in accordance with law and after hearing the petitioner and the Managers, within a period of six weeks from the date of receipt of a copy of this judgment. I have not pronounced upon the correction of the view expressed regarding the specialist teacher. Learned counsel for the petitioner submits that the embargo in Rule 2 (3) of Chapter XXIII is against creation of specialist teacher and that as a matter of fact it will not apply to the facts of this case since the mother of the petitioner was working in the school in the post that existed prior to 1969-70. It is certainly open to the petitioner to urge this contention also before the Government."

2. In accordance with said judgment the matter was reconsidered by the Government and the Government again rejected the claim by Ext.P18 order. Petitioner is challenging Ext.P18 order in this writ petition on the ground that the said order is against Exts.P1 and P16 judgment of this Court.

3. A counter affidavit has been filed on behalf of the first respondent. The contention therein is that even the sanctioning of a part-time Music Teacher's post to accommodate the petitioner in 6th respondent's school is a concession to comply with Ext.P1 judgment of this Court. It is stated again therein that a protected Music Teacher is still working in the 7th respondent's school. On these submissions, the Government Pleader seeks to sustain Ext.P18 order. The petitioner has filed a reply affidavit in which she categorically challenges the averments in the counter affidavit that there is a protected teacher working in the 7th respondent's school. She categorically states that the statement of the counter affidavit is false.

4. I have considered the rival contentions in detail. In Ext.P18 the contention of the petitioner has been rejected as follows:

(1)As per the circular No.H4-119952/89 dated 15.5.1990, it was made clear that the posts of special teachers in LP/UP will cease to exist as and when the posts are vacated due to retirement/resignation/death or like reasons of the teachers holding the posts. Hence the post was not in existence since 7.1.2004, that is, the date of death of her mother against which she was posted.

(2)Though there was no sufficient number of students warranting sanction of a post of Music teacher, the petitioner was posted as part time teacher, on the basis of the judgment in W.A.No.1107/96, and the directions contained in Government letter No.32561/K1/99/G. Edn. Dated 30.10.1999.

(3)Government have amended Rule 2(3) chap.XXIII, KER as per G.O.(P).No.189/2005/G. Edn. Dated 17.6.2005 by which no post of Specialist Teacher should be allowed to continue in any Lower Primary School or L.P section of Upper Primary School or High School except for the continuance of the qualified teachers who were actually holding the post on the 6th March, 1979 and that the Specialist Teachers appointed in L.P. Schools or L.P. section of U.P. School or High School after 6.3.1979 and whose appointments were approved shall be allowed to continue as such till their retirement, resignation, death or transfer.

In the above circumstances, the request of the petitioner cannot be considered and hence the same is rejected by Government."

5. In Ext.P18 the only reason mentioned is that there was no post of part-time Music Teacher in the 5th respondent's school after the mother of the petitioner died while in service. It is also stated that in view of amendment of Rule 2(3) Chapter XXIII of KER dated 17.6.2005 no post of Specialist Teacher should be allowed to continue in any Lower Primary School or L.P Section of Upper Primary School except for the continuance

of the qualified teachers who were actually holding the post on 6th March, 1979. Admittedly, the petitioner was appointed on 27.1.1994 ie, 11 years prior to amendment of Rule 2(3) Chapter XXIII of KER. Such amendment which is not retrospective also cannot now be against the petitioner. The question as to whether the petitioner is entitled to be appointed in the post which fell vacant on the death of her mother has been considered by a Division Bench of this Court in Ext.P1 judgment, in which based on the Supreme Court decision in Civil Appeal No.4417/1991 and in the light of the decision of this Court in Writ Appeal No.462/1990, it was held that the post occupied by the petitioner's mother continues to exist in the School and therefore, the petitioner's appointment to that post is liable to be approved. It was further held that the respondents in that Writ Appeal are bound to grant approval for the appointment of the petitioner in the post that existed prior to the academic year 1969-70, so long as the continuation of the post is warranted by Rule 2(2) Chapter XXIII of K.E.R. 11 years after the petitioner's appointment, the objections mentioned in Ext.P18 order cannot be valid. Therefore, on those reasons the respondent cannot

deny the claim of the petitioner for conversion of the part-time post into full-time on clubbing arrangements between 6th and 7th respondent's schools. The contention in the counter affidavit is that the petitioner's claim cannot be allowed since a protected teacher continues in the 7th respondent's school . I am afraid that the respondents 1 to 5 cannot be heard to contended so in view of Ext.P16 judgment wherein the respondents themselves had admitted before this Court that there is no protected teacher of Music working in the L.P. Section of V.H.S. School, Panangad. If the submission before this Court in O.P.No.2609/2002 was, in any way, incorrect, the respondents 1 to 5 should have resorted to appropriate remedies against Ext.P16 judgment which has not been done. In so far as Ext.P16 judgment stands, the respondents 1 to 5 cannot raise such a contention.

6. The result of the above discussion is that none of the objections now raised by respondents 1 to 5 against the claim of the petitioner for conversion of the part-time post in to full-time post on clubbing arrangement between the schools of respondents 6 and 7 are maintainable.

Accordingly, I quash Ext.P18 with a direction to the 3rd respondent to pass appropriate orders directing sanctioning of clubbing arrangement between the School of 6th and 7th respondents for the purpose of converting the petitioner's part-time post of Music Teacher in to full-time post of Music Teacher. It shall be done within a period of one month from the date of receipt of a copy of this judgment. The writ petition is allowed as above. Needless to say, the 3rd respondent shall also consider whether the petitioner is entitled to such full-time benefits from the academic year 1990-2000, ie., the date when clubbing arrangement was sought for.

S.SIRI JAGAN, JUDGE

dvs